



BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION

Advisory Opinion No. 04-007

A councilmember wishes to solicit a company to contribute money to a local municipality for construction of a community center. We conclude that the ethics law permits this solicitation because the County Council does not do business with, or regulate, the company.

Section 19A-16(a) (3) generally prohibits an employee from soliciting a gift to an organization while identifiable as a public employee. But § 19A-16(b) (2) permits an employee to solicit a gift from any person to a charitable organization, as defined in the state law regulating public charities, or a municipality, if the public employee does not solicit gifts primarily from those persons who do business with or are regulated by the county agency with which the public employee is affiliated, or from other employees who are supervised directly or indirectly by the public employee.

Thus, the key question is whether the councilmember is soliciting gifts primarily from “persons who do business with or are regulated by the county agency with which the public employee is affiliated.”

Although the councilmember is soliciting a gift from only one company, the County Council neither does business with, nor regulates, that company. The company, a local public utility, is regulated by the Public Service Commission, a State agency, not the County Council. And while the County may have some contracts with the company, the Council is not the “using agency” under the County’s procurement law. The Council does not do business with the company.¹

In conclusion, the ethics law permits the councilmember to engage in the proposed solicitation because the County Council does not do business with or regulate the company.

FOR THE COMMISSION:

Elizabeth K. Kellar, Chair

November 4, 2004

¹ Section 19A-4(e) defines doing business with as: (1) being a party with a County agency to a transaction that involves at least \$1,000 during a year; (2) negotiating a transaction with a County agency that involves at least \$1,000 during a year; or (3) submitting a bid or proposal to a County agency for a transaction that involves at least \$1,000 during a year.